

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

CENTEX HOMES, a Nevada general partnership,  
Plaintiff,  
v.  
FINANCIAL PACIFIC INSURANCE  
COMPANY, et al.  
Defendants.

Case No. 2:19-CV-01284-JCM-VCF

**ORDER**

Plaintiff Centex Homes (“Centex”) and defendant AXIS Surplus Lines Insurance Company (“AXIS”) have agreed to settle Centex’ claims against AXIS. The terms of Centex’ and AXIS’ settlement agreement provide that AXIS will pay Centex \$75,000 and that the settlement is contingent upon a judicial determination that the settlement was made in good faith. AXIS’ motion for a good faith settlement determination is before the Court.

Under Nevada law, the determination of whether a settlement is in “good faith” under NRS section 17.245 is “left to the discretion of the trial court based upon all relevant facts available.” *Velsicol Chemical Corp. v. Davidson*, 107 Nev. 356, 81 P.2d 561, 563 (Nev. 1991). The factors discussed in *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913, 927 (D. Nev. 1983), are among those the Court may consider in the exercise of its “considerable discretion.” *The Doctors Co. v. Vincent*, 120 Nev. 644, 98 P.3d 681, 686-87 (Nev. 2004). Such factors include “the amount

1 paid in settlement, the allocation of the settlement proceeds among plaintiffs, the insurance policy  
2 limits of settling defendants, the financial condition of settling defendants, and the existence of  
3 collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants.” *In re*  
4 *MGM*, 570 F. Supp. at 927 (citing *Commercial Union Ins. Co. v. Ford Motor Co.*, 640 F.2d 210 (9th  
5 Cir. 1981)). However, Nevada law includes no requirement that a court consider or limit its analysis  
6 to the *In re MGM* factors or hold a hearing before making a determination of good faith. *Velsicol*,  
7 811 P.2d at 563.

8       Generally, the amount paid in settlement is the primary factor in determination good faith.  
9 *In re MGM*, 570 F.Supp. at 928. Centex brought this lawsuit to recover approximately \$690,000 in  
10 defense fees and costs it incurred in the Underlying Action. Centex sued 11 insurers. A 1/11 share  
11 of the amount Centex sought is about \$63,000, less than the \$75,000 settlement agreed upon by  
12 Centex and AXIS. In addition, AXIS contends that Centex had the burden to show that it qualified  
13 as an additional insured under the AXIS Policy (*Nat’l Auto. & Cas. Ins. Co. v. Havas*, 75 Nev. 301,  
14 303 (1959)), but did not meet that burden until *after* it incurred all its fees and costs in the Underlying  
15 Action. AXIS therefore has an argument that Centex should take nothing from AXIS in this action.

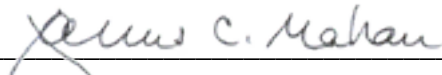
16       Moreover, the additional insured endorsement in the AXIS Policy limits coverage to the  
17 additional insured’s liability for “property damage” caused in whole or in part by Sunworld’s work.  
18 Sunworld was a defendant in the Underlying Action. AXIS paid \$10,000 to settle the claims against  
19 Sunworld. That amount was a small fraction of the monies paid to settle the Underlying Action. A  
20 Court, sitting in equity, has wide discretion to allocate defense fees and costs among insurers. AXIS  
21 has an argument that Centex faced little, if any, liability due to Sunworld’s work and that AXIS  
22 share of Centex’s defense, if any, should be similarly limited. *See Insurance Co. of West v. Great*  
23 *American Ins. Co.*, 2010 WL 3896152, at \*1 (D. Nev., Sept. 29, 2010, No. 2:09-CV-02150-KJD),  
24 *citing St. Paul Fire & Marine Ins. Co. v. Valley Forge Ins. Co.*, 2009 WL 789612 (N.D.Ga.2009).  
25 Further, if Centex and AXIS did not reach this settlement, they would have had to incur further fees  
26 and costs in this litigation.

27       In light of the foregoing and upon review of the record, the Court finds that the settlement  
28 between Centex and AXIS was made in good faith” under NRS section 17.245.

1 Accordingly,

2 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that AXIS' motion for  
3 determination of good faith settlement is GRANTED.

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5 DATED: April 14, 2021.

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8 UNITED STATES DISTRICT JUDGE  
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